

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

CLASSIC DESIGN and MICHAEL HOLLAND
Respondents

Case Nos.: I-00-11065
I-00-11174

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701, *et seq.*) and Title 21, Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11065) served on March 1, 2001, the Government charged Respondents Classic Design and Michael Holland with violations of 21 DCMR 506.2 (failing to comply with an approved erosion and sedimentation plan); 21 DCMR 539.4 (failing to place adequate erosion control measures before and during exposure); 21 DCMR 538.1(k) (failing to establish temporary cover by seeding or mulching graded areas); and 21 DCMR 539.5 (creating a period of exposure exceeding one hundred twenty (120) days). The Notice of Infraction alleged that these violations occurred on February 27, 2001 at 4863 Colorado Avenue, N.W., and sought a fine of \$100.00 for each violation, for a total amount of \$400.00.

Respondents failed to respond to the Notice of Infraction within the allotted twenty (20) days (fifteen days plus five days for mailing pursuant to D.C. Code §§ 6-2712(e), 6-2715). Accordingly, on March 27, 2001, this administrative court issued an order finding Respondents in default, assessing a statutory penalty of \$400.00 pursuant to D.C. Code § 6-2704(a)(2)(A) and ordering the Government to issue a second Notice of Infraction pursuant to D.C. Code § 6-2712(f). The Government served the second Notice of Infraction (No. 00-11174) on April 4, 2001.

On March 29, 2001, this administrative court received Respondents' untimely plea of Admit to all charges, along with a check (No. 05252) in the amount of \$400.00. Accordingly, on April 3, 2001, this administrative court issued an order closing the case for purposes of the fine, but leaving the matter open for purposes of the outstanding \$400.00 statutory penalty. On April 4, 2001, Respondents filed a letter requesting that no penalties be assessed. In support of their request, Respondents stated that, during the time they received the notice of violation, their secretary had "abruptly left without notice for other employment and the violation was not discovered until March 25, 2001."

By order dated April 9, 2001, this administrative court permitted the Government to reply to Respondents' request within ten (10) calendar days of the service date of the order. Because the Government has not submitted a reply within the allotted time period, this matter is now ripe for adjudication.

II. Findings of Fact

1. Respondents have admitted to violating 21 DCMR 506.2, 21 DCMR 538.1(k), 21 DCMR 539.4, and 21 DCMR 539.5 on February 27, 2001 at 4868 Colorado Avenue, N.W.
2. On February 27, 2001, Respondents failed to comply with an approved erosion and sedimentation plan; failed to place adequate control measures before and during exposure; failed to establish temporary cover by seeding or mulching graded areas; and created a period of exposure exceeding one hundred twenty (120) days.
3. On March 1, 2001, the Government served the first Notice of Infraction upon Respondents by certified mail. By Order dated March 27, 2001, this administrative court, among other things, assessed Respondents a statutory penalty of \$400.00 pursuant to D.C. Code § 6-2704(a)(2)(A) in addition to the \$400.00 fine amount sought by the Government.
4. On March 29, 2001, Respondents submitted an untimely plea of Admit, along with a check the amount of \$400.00.
5. Around the time Respondents received the first Notice of Infraction, Respondents' secretary left her position without notice. As a result the Notice of Infraction was not discovered until March 25, 2001.
6. Respondents have requested a suspension or reduction of any assessed statutory penalty. The Government has not offered a reply to Respondents' request.

III. Conclusions of Law

1. Respondents violated 21 DCMR 506.2, 21 DCMR 538.1(k), 21 DCMR 539.4, 21 DCMR 539.5 on February 27, 2001 at 4863 Colorado Avenue, N.W. A fine of \$100.00 is authorized for each of these violations, for a total fine of \$400.00. 16 DCMR 3234(b); 16 DCMR 3234(w); 16 DCMR 3234(y); 16 DCMR 3234(z). Respondents have paid the total fine in full.
2. Respondents have requested a reduction or suspension of the assessed statutory penalty. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within the established time limits, the respondent shall be liable for a penalty equal to the applicable fine. D.C. Code § 6-2704(a)(2)(A).
3. Based on this record, Respondents have not established good cause for failing to timely respond to the Notice of Infraction. While I credit Respondents' explanation regarding the "abrupt" departure of their secretary, a highly regulated business such as Respondents' should have in place a reasonable and adequate back-up mechanism for the timely handling of business-related correspondence from government authorities and others in case of employee absences, whatever the cause of those absences might be.
4. In light of Respondents' explanation, therefore, I conclude that no reduction of the statutory penalty is appropriate in this case. Accordingly, the statutory penalty shall remain as previously assessed.

IV. Order

Based upon the above findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Respondents shall jointly pay **FOUR HUNDRED DOLLARS (\$400.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code §

6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **8/27/01**

Mark D. Poindexter
Administrative Judge